



# WIPO Arbitration and Mediation Center

## ADMINISTRATIVE PANEL DECISION

**Gordon Sumner, p/k/a Sting v Michael Urvan**

**Case No. D2000-0596**

### **1. The Parties**

1.1 The Complainant is Gordon Sumner, professionally known as "Sting", a citizen of the United Kingdom who maintains a residence in the United States. The Respondent is Michael Urvan, of Marietta, Georgia, United States of America.

### **2. The Domain Names and Registrar**

2.1 The domain name the subject of this Complaint is "sting.com".

2.2 The Registrar of this domain name is Network Solutions, Inc of Herndon, Virginia, USA ("Registrar").

### **3. Procedural History**

#### **Issuance of Complaint**

3.1 The Complainant by email and by courier submitted to the World Intellectual Property Organization Arbitration and Mediation Center ("WIPO Center") a Complaint made pursuant to the Uniform Domain Name Dispute Resolution Policy implemented by the Internet Corporation for Assigned Names and Numbers (ICANN) on October 24, 1999, ("Uniform Policy"), and under the Rules for Uniform Domain Name Dispute Resolution Policy implemented by ICANN on the same date ("Uniform Rules"). The email copy of the Complaint was received by the WIPO Center on June 13, 2000, and the hard copy of the Complaint was received by the WIPO Center on June 15, 2000. An Acknowledgment of Receipt was sent by the WIPO Center to the Complainant, by email dated June 15, 2000.

#### **Confirmation of Registration Details**

3.2 A Request for Registrar Verification was dispatched by the WIPO Center to the Registrar by email on June 15, 2000. By email to the WIPO Center on June 20, 2000, the Registrar confirmed that it had received a copy of the Complaint from the Complainant; confirmed that it was the Registrar of the domain name the subject of the Complaint; confirmed that the current registrant of the domain name is the Respondent; informed that the administrative, and billing Contact for the domain names is the Respondent, and provided postal, telephone, facsimile and email contact details for the administrative, technical, zone and billing Contact; and informed that the status of each of the domain names in issue is "active". The Registrar also confirmed that its 5.0 Service Agreement is in effect. Amongst other things, that agreement provides that the Respondent as registrant of the domain name agrees to be bound by the domain name dispute policy incorporated therein. The policy incorporated into the agreement is the Uniform Policy.

### **Notification to Respondent**

3.3 Having verified that the Complaint satisfied the formal requirements of the Uniform Policy and the Uniform Rules, and that payment of the filing fee had been properly made, the WIPO Center issued to the Respondent, and to the technical and zone contact for the domain name, a Notification of Complaint and Commencement of Administrative Proceeding, by email on June 20, and by courier and fax on June 21, to the addresses provided by the Registrar. Copies of this Notification of Complaint were sent to the Complainant, the Registrar and ICANN by email on June 20.

3.4 This Administrative Panel finds that the WIPO Center has discharged its responsibility under Paragraph 2(a) of the Uniform Rules "to employ reasonably available means calculated to achieve actual notice to Respondent".

### **Filing of Response**

3.5 A Response was filed by the Respondent, and received by the WIPO Center by email on July 8, within the time specified in the Notification of Complaint. A hardcopy of the Response, with Exhibits, was subsequently received by the WIPO Center by courier.

### **Constitution of Administrative Panel**

3.6 Subsequent to receipt of the Response, and in accordance with the request in the Complaint, the WIPO Center proceeded to appoint a single Panelist, and invited Dr Andrew F. Christie to so act. On July 11, 2000, Dr Christie indicated his ability to act as the sole Panelist in this case, and submitted to the WIPO Center a Statement of Acceptance and Declaration of Impartiality and Independence the following day. On July 11, 2000, the WIPO Center issued to both parties a Notification of Appointment of Administrative Panel and Projected Decision Date, informing of Dr Christie's appointment and that absent exceptional circumstances a decision would be provided by this Administrative Panel by July 24, 2000. The case before this Administrative Panel was conducted in the English language.

### **Compliance with the formalities of the Uniform Policy and the Uniform Rules**

3.7 Having reviewed the Case File in this matter, this Administrative Panel concurs with the assessment by the WIPO Center that the Complaint complies with the formal requirements of the Uniform Policy and Uniform Rules.

### **Interim Orders**

3.8 In response to certain procedural requests from the Complainant, this Administrative Panel issued an Interim Order on July 19, 2000, and a second Interim Order on July 20, 2000. The effect of the first Interim Orders was to deny the Complainant's request for a Stay, to rule invalid and disregard the Complainant's unsolicited submission of a Reply, and to extend to July 26, 2000, the date by which this Administrative Panel was required to forward a Decision in this

case. The effect of the second Interim Order was to deny the Complainant's request to be allowed to submit a Reply. Copies of these interim orders are attached to this decision.

#### **4. Factual Background**

##### **Complainant's Activities and Trademarks**

4.1 In his Complaint, the Complainant asserted the following in relation to his activities and trademarks. The Complainant is a world famous musician, recording and performing artist who has, for over twenty years, rendered high-quality musical services under his name, trademark and service mark STING. Since at least as early as 1978, the Complainant has exclusively and continuously used the STING mark in connection with approximately twenty record albums, almost all of which have gone multi-platinum in the United States and enjoyed great commercial success worldwide. The Complainant has also used the STING mark in connection with innumerable world-wide concert tours involving venues with significant capacities, the majority of which sell out. The STING mark is internationally known and famous as a result of the Complainant's extensive, high-profile, and overwhelmingly commercially successful activities in the music industry. The Complainant is the owner of the STING mark as a trademark and service mark. The name STING has become synonymous in the minds of the public with the Complainant and his activities in the music industry, and serves as a symbol of the goodwill and excellent reputation associated with Sting. The STING mark is famous and entitled to the widest scope of protection afforded by law, including protection against dilution.

4.2 In his Response, the Respondent asserted that there are 20 trademark registrations of the word STING in the US, but none of them are registered by the Complainant. The word STING is a common word in the English language, and so registration of it as a domain name is not a violation of the Uniform Policy. The Respondent is not a competitor of the Complainant and the Respondent does not attempt to cause any confusion with him.

##### **Respondent's Activities**

4.3 The Complainant asserted the following in relation to the Respondent's activities and use of the domain name. Until the Respondent was contacted by a representative of the Complainant, the Respondent made no use of the domain name. After being contacted by a representative of the Complainant, Respondent linked the domain name to another site called "GunBroker.Com", which is a site that facilitates "person to person" selling of guns. During or about February of 2000, and again during or about May of 2000, the Respondent offered to sell the domain name to the Complainant for \$25,000.00. Since offering to sell the domain name to the Complainant for \$25,000.00, the Respondent has frequently changed the web site identified by the domain name, usually with an "under construction" message, and in some cases providing a link to a third-party operated unauthorized web site relating to the Complainant.

4.4 In his Response, the Respondent asserted that he has been using the nickname "Sting" and more recently "=Sting=" publicly on the Internet for at least 8 years. The Respondent registered the domain name in July 1995, approximately 5 years before this dispute was commenced. The Respondent did not register the domain name to sell it, nor did he register the domain to hold it hostage for any reason. The Respondent engaged in work on web site to which he intended the domain name "sting.com" to resolve, prior to any notification of this dispute. The Respondent did not point the domain name "sting.com" to the "GunBroker.com" website – this occurred for a short time as a result of an error on the part of the Respondent's web service provider. The Complainant's assertion that the Respondent initiated contact with the Complainant is false - the first contact was initiated by the Complainant on May 16, 2000.

#### **5. Parties' Contentions**

## **The Complaint**

5.1 The Complainant contends that each of the three elements specified in paragraph 4(a) of the Uniform Policy are applicable to the domain name the subject of this dispute.

5.2 In relation to element (i) of paragraph 4(a) of the Uniform Policy, the Complainant contends that the domain name is identical in its substantive part to the Complainant's unregistered trademark and service mark STING.

5.3 In relation to element (ii) of paragraph 4(a) of the Uniform Policy, the Complaint contends that the Respondent has no rights or legitimate interests in respect of the domain name in issue.

5.4 In relation to element (iii) of paragraph 4(a) of the Uniform Policy, the Complainant contends that evidence of bad faith registration and use is established by the following circumstances. First, the Respondent offered to sell the domain name to the Complainant for \$25,000, an activity which corresponds to that listed in paragraph 4(b)(i) of the Policy as evidence of bad faith registration and use of a domain name. Secondly, the Respondent has used the domain name mark to link to the "GunBrokers.com" web site, and as such is intentionally attempting to attract, for commercial gain, Internet users to an on-line location by creating a likelihood of confusion with the STING mark as to source, sponsorship, affiliation, or endorsement, being an activity which corresponds to that listed in paragraph 4(b)(iv) of the Policy as evidence of bad faith registration and use of a domain name. In addition, that site is personally offensive to the Complainant and contrary to his established reputation, and tarnishes the STING mark in violation of 15 U.S.C. § 1125(c). Thirdly, because the Complainant's STING mark has a strong reputation and is world famous, the Respondent can make no good faith use of the domain name, and "it is not possible to conceive of any plausible actual or contemplated active use of the [D]omain [N]ame by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law".

## **The Response**

5.5 The Respondent denies that each of the three elements specified in paragraph 4(a) of the Uniform Policy are applicable to the domain name the subject of this dispute.

5.6 In relation to element (i) of paragraph 4(a) of the Uniform Policy, the Respondent admits that he registered that domain name "sting.com", and that the domain name is identical to the STING mark. However, the Respondent challenges the Complainant's claim to owning the STING mark, and the Complainant's claim that the STING mark is world famous and exclusively associated with the Complainant and so entitled to protection against dilution. In particular, the Respondent contends that the trademark STING has been the subject of 20 registrations in the United States, none of which have been granted to the Complainant. A list purporting to be a printout from an internet search of the United States Patent and Trademark Office database of trademark registrations for the word STING is Exhibit J to the Response.

5.7 In relation to element (ii) of paragraph 4(a) of the Uniform Policy, the Respondent contends that his use of the nickname "Sting" and more recently "=Sting=" publicly on the Internet for at least 8 years has given him a legitimate interest in the domain name. The Respondent provided documentary evidence in Exhibits A, C, D, E and H to the Response, showing that for some years prior to this dispute he has used the domain name to point to a web site for email purposes, he has used the nickname "sting" or "=sting=" with global internet gaming services, and he has had in development a web site intended to be located at the URL <http://www.sting.com>.

5.8 In relation to element (iii) of paragraph 4(a) of the Uniform Policy, the Respondent contends that his activities since registration of the domain name demonstrate that he did not register and has not been using the domain name in bad faith. In particular, the Respondent denies the Complainant's contention that the Respondent offered to sell the domain name to the

Complainant for a sum greater than out of pocket expenses. Rather, the Respondent contends that it was the Complainant, through his attorney, who contacted him in relation to the domain name. The Respondent provides in Exhibit B to the Response a copy of an email from the Complainant's attorney to him of May 17, 2000, initiating contact. The Respondent admits that upon solicitation from the Complainant's attorney he did make an offer to sell the domain name, but contends that this does not demonstrate his primary purpose in registering the domain name was to sell it to the Complainant.

5.9 In relation to the use of the domain name to point to the "GunBrokers.com" web site, the Respondent contends that because this occurred due to a mistake by his web service provider, it is not evidence of bad faith use by him. Exhibit I of the Response contains a copy of a letter purporting to be from the Respondent's web service provider explaining how this mistake occurred. In addition, the Respondent contends that he had no knowledge of the Complainant's distaste for a web site selling guns.

5.10 The Respondent makes the further contention that it cannot be said he has engaged in a pattern of conduct of preventing trademark owners from reflecting their trademark in a corresponding domain name, because the other two domain names the Respondent owns have not been offered for sale to anyone.

## **6. Discussion and Findings**

### **Domain Name Identical or Confusingly Similar to Complainant's Mark**

6.1 The relevant part of the domain name "sting.com" is "sting". The Complainant asserts, the Respondent admits, and this Administrative Panel finds, that the domain name is identical to the word STING.

6.2 The Complainant is not the owner of a trademark or service mark registration for the word STING. It is, however, clear that the Uniform Policy is not limited to a "registered" mark; an unregistered, or common law, mark is sufficient for the purposes of paragraph 4(a)(i). The Complainant did not provide any documentary evidence in support of his assertion that he is the owner of the unregistered trademark and/or service mark STING. However, the Uniform Policy is not limited to trademarks or service marks "owned" by the Complainant; it is sufficient for the purposes of paragraph 4(a)(i) that there be a trademark or service mark "in which the Complainant has rights". The Complainant asserted, and this Administrative Panel through the equivalent of taking judicial notice finds, that the Complainant is a world famous entertainer who is known by the name STING.

6.3 The question that arises is whether being known under a particular name is the same as having rights in that name as a "trademark or service mark". The answer to this question is not straightforward. On the one hand, there are a number of cases under the Uniform Policy in which the Panel has treated the name of a famous or at least widely known person as constituting an unregistered trademark or service mark sufficient for the purposes of paragraph 4(a)(i) (eg. *Julia Fiona Roberts v Russell Boyd* WIPO Case No. D2000-0210; *Jeannette Winterson v Mark Hogarth* WIPO Case No. D2000-0235; *Steven Rattner v BuyThisDomainName (John Pepin)* WIPO Case No. D2000-0402).

6.4 On the other hand, the *Report of the WIPO Internet Domain Name Process* of April 30, 1999, on which ICANN based the Uniform Policy, at paragraphs 165-168, states as follows (footnote citations deleted, emphasis added):

The preponderance of views, however, was in favor of restricting the scope of the procedure, at least initially, in order to deal first with the most offensive forms of predatory practices and to establish the procedure on a sound footing. Two limitations on the scope of the procedure were, as indicated above, favored by these commentators. The first limitation would confine the

availability of the procedure to cases of deliberate, bad faith abusive registrations. The definition of such abusive registrations is discussed in the next section. The second limitation would define abusive registration by reference only to trademarks and service marks. *Thus, registrations that violate trade names, geographical indications or personality rights would not be considered to fall within the definition of abusive registration for the purposes of the administrative procedure.* Those in favor of this form of limitation pointed out that the violation of trademarks (and service marks) was the most common form of abuse and that the law with respect to trade names, geographical indications and personality rights is less evenly harmonized throughout the world, although international norms do exist requiring the protection of trade names and geographical indications. We are persuaded by the wisdom of proceeding firmly but cautiously and of tackling, at the first stage, problems which all agree require a solution. ... [W]e consider that it is premature to extend the notion of abusive registration beyond the violation of trademarks and service marks at this stage. After experience has been gained with the operation of the administrative procedure and time has allowed for an assessment of its efficacy and of the problems, if any, which remain outstanding, the question of extending the notion of abusive registration to other intellectual property rights can always be re-visited.

It is clear from this statement that personality rights were not intended to be made subject to the proposed dispute resolution procedure. In adopting the procedure proposed in the WIPO Report, ICANN did not vary this limitation on its application. It must be concluded, therefore, that ICANN did not intend the procedure to apply to personality rights.

6.5 In the opinion of this Administrative Panel, it is doubtful whether the Uniform Policy is applicable to this dispute. Although it is accepted that the Complainant is world famous under the name STING, it does not follow that he has rights in STING *as a trademark or service mark*. Unlike the personal names in issue in the cases *Julia Fiona Roberts v Russell Boyd*, *Jeannette Winterson v Mark Hogarth*, and *Steven Rattner v BuyThisDomainName (John Pepin)*, the personal name in this case is also a common word in the English language, with a number of different meanings. The following are the entries for "sting" from *Merriam-Webster's Collegiate Dictionary*:

sting vb stung ; sting.ing [ME, fr. OE stingan; akin to ON stinga to sting and prob. to Gk stachys spike of grain, stochos target, aim] vt (bef. 12c) 1: to prick painfully: as a: to pierce or wound with a poisonous or irritating process b: to affect with sharp quick pain or smart "hail stung their faces" 2: to cause to suffer acutely "stung with remorse" 3: overcharge, cheat ~ vi 1: to wound one with or as if with a sting 2: to feel a keen burning pain or smart; also: to cause such pain -- sting.ing.ly adv

sting n (bef. 12c) 1 a: the act of stinging; specif: the thrust of a stinger into the flesh b: a wound or pain caused by or as if by stinging 2: stinger 2 3: a sharp or stinging element, force, or quality 4: an elaborate confidence game; specif: such a game worked by undercover police in order to trap criminals

6.6 In light of the fact that the word "sting" is in common usage in the English language, with a number of meanings, this case can be distinguished from the other cases cited above in which the Complainants' personal name was found also to be an unregistered trademark or service mark to which the Uniform Policy applies. This Administrative Panel is inclined to the view, therefore, that the Complainant's name STING is not a trademark or service mark within the scope of paragraph 4(a)(i) of the Uniform Policy. However, it is not necessary to reach a formal decision on this issue, because this Administrative Panel finds against the Complainant on other grounds, namely that the requirement of paragraph 4(a)(iii) is not met, as discussed below.

### **Respondent's Rights or Legitimate Interests in the Domain Name**

6.7 The Respondent provided evidence of circumstances of the type specified in paragraph 4(c) of the Uniform Policy as giving rise to a right to or legitimate interest in the domain name. In particular, the Respondent provided in Exhibit C of the Response copies of various email communications to him prior to the commencement of this dispute, showing that the

"UserName", the "nickname", the "Screen Name", or the "Account PIC" under which the Respondent had registered for global internet gaming services consisted of or included the word "sting". In Exhibit D to the Response, the Respondent provided copies of web page printouts from The Champions League of Quake, a service which monitors Quake servers and keeps track of the scores of registered players of this game. Those printouts show that the Respondent played this game using the player names "sting" or "=sting=". In addition, the Respondent provided evidence in Exhibit E to the Response of preparations by him to establish a web site at the URL <http://www.sting.com>.

6.8 Although this evidence is not irrelevant to the issue of whether or not the Respondent has a right to or a legitimate interest in the domain name, it is certainly at the weaker end of the spectrum of such evidence. The Respondent's use of the name "sting" or "=sting=" for gaming does not establish that he has been "commonly known" by the domain name as contemplated by paragraph 4(c)(ii). The word is undistinctive, and most likely is used by numerous people in cyberspace. In practice, this word provides the Respondent with anonymity rather than with a name by which he is commonly known. The Respondent's evidence of his preparations to establish a web site at the URL <http://www.sting.com> does not establish the circumstances contemplated by paragraph 4(c)(i), because there is no evidence that this proposed use of the domain name is in connection with a bona fide offering of goods or services.

6.9 In short, a more substantive use of the word "sting" than that proven by the Respondent is required to show a right or legitimate interest in the domain name "sting.com" (although this proven use is relevant to the issue of bad faith). On balance, therefore, this Administrative Panel finds that the Respondent does not have a right to or a legitimate interest in the domain name, in the sense in which that concept is used in paragraph 4(a)(ii) of the Uniform Policy.

#### **Domain Name Registered and Used in Bad Faith**

6.10 The Complainant has not satisfied this Administrative Panel that the Respondent registered and is using the domain name in bad faith. The Complainant asserted that the Respondent offered to sell the domain name to the Complainant for \$25,000, but the Complainant provided no evidence in support of this assertion. In particular, the Complainant provided no evidence of the Respondent's alleged communications with the Complainant on this issue. The Respondent admitted that he offered to sell the domain name to the Complainant, but only after the Complainant solicited that offer. (The Respondent did not specify the price at which he offered to sell the domain name, but he did not dispute the Complainant's assertion of \$25,000, so this Administrative Panel assumes the offered price was for that amount, or at least for an amount in excess of the Respondent's out-of-pocket expenses.) Although this evidence is *consistent* with the Complainant's contention that the Respondent acquired the domain name primarily for the purpose of selling it to the Complainant, as required by paragraph 4(b)(i), this evidence does not *prove* that. This evidence is equally consistent with the Respondent's contention that he acquired the domain name five years ago in good faith. In the absence of any evidence whatsoever from the Complainant going to the assertion of the Respondent's offer to sell the domain name, this Administrative Panel finds that the Complainant has not met the burden of proof on this issue.

6.11 This Administrative Panel does not accept the Complainant's contention that the linking of the domain name to the "GunBroker.com" web site constituted intentionally attempting to attract, for commercial gain, Internet users to an on-line location by creating a likelihood of confusion with the STING mark as to source, sponsorship, affiliation, or endorsement, and so constitutes an activity which corresponds to that listed in paragraph 4(b)(iv) of the Uniform Policy as evidence of bad faith registration and use of the domain name. Again, the Complainant provided no evidence in support of this contention. In particular, the Complainant provided no evidence as to the contents of the "GunBroker.com" site, and thus no evidence establishing that a likelihood of confusion with the STING mark was created as to source, sponsorship, affiliation or endorsement of the site. The Respondent admitted that the domain name did point to the "GunBroker.com" site for a period of time, but provided evidence to the effect that this was due to an error on the part of the Respondent's web service provider. The evidence is therefore consistent with the Respondent's contention that there was no intentional attempt to attract

internet users for commercial gain. Once again, the Complainant has failed to satisfy its burden of proof on this point.

6.12 Finally, this Administrative Panel does not accept the Complainant's contention that "it is not possible to conceive of any plausible actual or contemplated active use of the [D]omain [N]ame by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law". The words in quotation marks come from *Telstra Corporation Limited v Nuclear Marshmallows* WIPO Case No. D2000-0003. In the *Telstra* case, the trademark in question was an invented word. In this case the mark in question is a common word in the English language, with a number of meanings. Unlike the situation in the *Telstra* case, therefore, it is far from inconceivable that there is a plausible legitimate use to which the Respondent could put the domain name. The Respondent has asserted a legitimate use to which he has put, and intends to put, the domain name. Whilst the evidence provided in support of this assertion is not particularly strong, it is at least consistent with that assertion, and with his overall contention that he did not register and has not been using the domain name in bad faith. The Complainant has thus failed to satisfy the burden of proof on this point.

## **7. Decision**

7.1 This Administrative Panel decides that the Complainant has not proven each of the three elements in paragraph 4(a) of the Uniform Policy in relation to the domain name the subject of the Complaint.

7.2 Pursuant to paragraph 4(i) of the Uniform Policy and paragraph 15 of the Uniform Rules, this Administrative Panel denies the request that the Registrar, Network Solutions, Inc, be required either to transfer to the Complainant, Gordon Sumner, p/k/a Sting, or to cancel, the domain name "sting.com".

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Andrew F. Christie  
Sole Panelist

Dated: July 24, 2000

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### **Attachment 1**

#### **ADMINISTRATIVE PANEL INTERIM ORDER**

**Gordon Sumner, p/k/a Sting v Michael Urvan**

**Case No. D2000-0596**



## **Background to this Interim Order**

1. The Complainant, by email to the WIPO Arbitration and Mediation Center ('WIPO Center') on June 13, 2000, filed a Complaint against the Respondent in relation to the domain name "sting.com", pursuant to the Uniform Domain Name Dispute Resolution Policy implemented by the Internet Corporation for Assigned Names and Numbers (ICANN) on October 24, 1999, ("Uniform Policy"), and under the Rules for Uniform Domain Name Dispute Resolution Policy implemented by ICANN on the same date ("Uniform Rules"). A Notification of Complaint and Commencement of Administrative Proceeding was sent to the Respondent on June 20, 2000. The Respondent filed a Response within the required time, which was received at the WIPO Center by email on July 8, 2000. On July 11, 2000, the WIPO Center appointed Dr Andrew F. Christie as Sole Panelist in this case.

2. On the same day as the appointment of this Administrative Panel, the Respondent by email to the WIPO Center (a copy of which was forwarded to this Administrative Panel) requested the opportunity to file a Reply to Respondent's Response. On the same day the WIPO Center by email replied as follows (a copy of which was forwarded to this Administrative Panel):

Uniform Policy and Rules do not foresee submission of pleadings following the Complaint and Response. As the Administrative Panel has now been appointed in this case, and the Case File has been transmitted, the sole discretion whether to call for further particulars or pleadings now rests with the Panel, who will be copied your request.

3. By email to the WIPO Center on July 14, 2000, (a copy of which was forwarded to this Administrative Panel), the Complainant requested a Stay of this dispute, for the following reasons:

Complainant has still not received the hard copy (including Exhibits) of Respondent's Reply, although Respondent claims he mailed them on July 7th. Complainant received Respondent's Response via e-mail. The Response raises several issues that Complainant strongly feels need to be addressed, and Complainant has already submitted a request to the Panel that Complainant be allowed to file a Reply. However, Complainant cannot complete the Reply without the benefit of Respondent's Exhibits, which Complainant has still not received. Complainant therefore respectfully requests a Stay of this Dispute, pending Complainant's receipt of Respondent's Exhibits.

4. On July 19, 2000, by email to the WIPO Center (a copy of which was forwarded to this Administrative Panel), the Complainant purported to file a Reply to Respondent's Response.

5. On the same day as the Complainant purported to file the Reply, by email to the WIPO Center (a copy of which was forwarded to this Administrative Panel), the Respondent communicated as follows:

As shown from the copy of the correspondence below, Complainant was specifically warned NOT to make anymore submissions until such time as the Panel acknowledges the Complainant's request and agrees to allow further submissions. Therefore, respondent respectfully requests that Complainant's submission be disregarded. Should the Panel decide to allow the reply, Respondent wishes to rebut. Should the Panel decide to allow more submissions, then Respondent asks that Respondent be granted the final submission/closing argument as is customary. For the sake of order, Respondent asks Complainant's counsel to please maintain discipline and follow the arbiter's instructions.

## **Observations on the filing of Supplementary Submissions**

6. The WIPO Center, in its communication with the Complainant, correctly observed that the Uniform Policy and Uniform Rules do not provide for the parties to the dispute filing

supplementary submissions subsequent to the Complaint and the Response. However, rule 12 of the Uniform Rules does provide that:

In addition to the complaint and the response, the Panel may request, in its sole discretion, further statements or documents from either of the Parties.

7. This Administrative Panel agrees with the views of the three-member Administrative Panel in *Document Technologies, Inc. v. International Electronic Communications, Inc* (WIPO Case D2000-0270) in relation to the filing of supplementary submissions, which were as follows:

Although litigants and parties in arbitrations may have a right of reply under the rules of other forums, ICANN chose a different procedure for these proceedings that calls for only a Complaint and a Response. Among other things, this more truncated procedure allows for more rapid and cost effective resolution of domain name challenges. See *CRS Technology Corp. v. CondeNet, Inc.*, File No. FA#0002000093547 (NAF Mar. 28, 2000). At the same time, ICANN provided the Panel with the flexibility to seek additional submissions if the Panel feels that it cannot rule on the record submitted. If a Party wishes to submit a further statement, the better practice under the Rules would be to first seek consent from the Panel, with an explanation of why a further statement is warranted. Appropriate reasons may include the existence of new, pertinent facts that did not arise until after the submission of the complaint, or the desire to bring new, relevant legal authority to the attention of the Panel. *E.g.*, *Pet Warehouse v. Pets.Com, Inc.*, Case No. D2000-0105 (WIPO Apr. 13, 2000). The Panel would then be in a position quickly to rule on the request and, if it determines that a further statement is warranted, set a schedule that is fair to both parties and provides each party with an opportunity to supplement the record. This procedure also would save the Parties the expense of preparing further statements that the Panel decides not to accept. See generally *Plaza Operating Partners, Ltd. v. Pop Data Technologies and Joseph Pillus*, Case No. D2000-0166 (WIPO June 1, 2000).

8. There can be no doubt that neither the Complainant nor the Respondent has a right to file supplementary submissions subsequent to the Complaint and the Response. Supplementary submissions can only be filed in response to a request for such from the Panel. Accordingly, this Administrative Panel is strongly of the opinion that parties must refrain from purporting to submit unsolicited supplementary submissions. It is, of course, for each Administrative Panel to determine whether or not to request supplementary submissions, taking into account all the circumstances of the particular case (including but not limited to any plea from a party for leave to file further material). Nevertheless, this Administrative Panel considers that it would, and should, be in exceptional cases only that supplementary submissions are requested by a Panel. If requesting supplementary submissions were to become unexceptional, the dispute resolution procedure under the Uniform Policy and Rules would most likely become significantly more resource-consuming to all the actors (ie. the parties, the dispute resolution service provider, and the Administrative Panel) than is currently the case, as the unfolding scenario in this case demonstrates. Such an outcome seems contrary to the clear intention of ICANN in adopting the Uniform Policy and the Uniform Rules in their present form.

#### **Deliberations of this Administrative Panel**

9. This Administrative Panel has not requested any supplementary submissions and, in the absence of such a request, will not read them. Accordingly, this Administrative Panel has not read the Complainant's Reply. It follows that, unless a request for a supplementary submission is made by this Administrative Panel, there is no need for the Respondent to file any rebuttal. It also follows that the Complainant's request for a Stay is denied.

10. Nevertheless, this Administrative Panel considers that an abundance of caution for procedural fairness requires that the Complainant be given time to consider its position in light of the above observations and this Interim Order. Accordingly, this Administrative Panel finds that there are exceptional circumstances of the type contemplated by rule 15(b) of the Uniform Rules, such as to mean that the time for forwarding a Decision in this case will be extended by two days, to July 26, 2000.

## **Interim Order**

11. This Administrative Panel orders that:

(a) the Complainant's request for a Stay is denied

(b) the Complainant's purported submission of a Reply is invalid, and shall be disregarded by this Administrative Panel

(c) the time for this Administrative Panel to forward a Decision in this case to the WIPO Center is extended to July 26, 2000.

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Andrew F. Christie  
Sole Panelist

Dated: July 19, 2000

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### **Attachment 2**

#### **ADMINISTRATIVE PANEL 2<sup>nd</sup> INTERIM ORDER**

**Gordon Sumner, p/k/a Sting v Michael Urvan**

**Case No. D2000-0596**

#### **Background to this 2<sup>nd</sup> Interim Order**

1. This Administrative Panel issued an Interim Order on July 19, 2000, denying the Complainant's request for a Stay, ruling invalid and disregarding the Complainant's purported submission of a Reply to the Respondent's Response, and extending to July 26, 2000, the time for this Administrative Panel to forward a Decision in this case to the WIPO Center.

2. By email to the WIPO Center on July 19, 2000, (a copy of which was forwarded to this Administrative Panel), the Complainant requested that it be permitted to submit a Reply. It pleaded that a further statement by the Complainant was warranted for the following reasons:

Respondent has submitted factual issues pertaining to a) his alleged "good faith" use of the domain name; b) his dealings with representatives of Complainant; c) his pointing the domain name to a gun broker site; and d) his alleged use of the domain name as a "nick name," that are pertinent to this dispute and that are strongly disputed by Complainant and Complainant's counsel (who has first hand knowledge of many of these factual issues). Further, Respondent has submitted legal arguments concerning Complainant's rights in his mark and Respondent's alleged "legitimate or fair use" of the Domain Name, that Complainant feels should be

addressed by both Parties in order for the Panel to reach a decision, rather than require the Panel to rely solely on the unilateral statements and arguments of Respondent.

### **Deliberations of this Administrative Panel**

3. In its Interim Order of July 19, 2000, this Administrative Panel expressed the view that it should be in exceptional cases only that supplementary submissions are requested by a Panel. This Administrative Panel does not consider that the circumstances of this case are exceptional, such as to require the Panel to request the Complainant to file a Reply. The reasons for this view are set out below.

4. The Complainant has pleaded two grounds as justifying the Panel to request a supplementary submission. The first ground is that the Respondent has "submitted factual issues pertaining to" his alleged good faith, his dealings with representatives of the Complainant, and his use of the domain name "that are pertinent to this dispute and that are strongly disputed by Complainant". Such circumstances are hardly exceptional. Indeed, the circumstance of a Respondent filing material that pertains to relevant issues and consists of facts disputed by the Complainant is, in this Administrative Panel's experience of adjudicating domain name disputes under the ICANN Uniform Policy and Rules, unexceptional in the extreme.

5. The second ground pleaded by the Complainant is that the Respondent "has submitted legal arguments" concerning the Complainant's rights and the Respondent's alleged legitimate or fair use of the domain which the Complainant feels "should be addressed by both Parties" rather than requiring the Panel "to rely solely on the unilateral statements and arguments" of the Respondent. This Administrative Panel has considered carefully the Complaint and the Response filed in this case, and is satisfied that these documents are sufficient for it to properly resolve this case without reference to supplementary material. The Complaint contains assertions going to the issue of the Complainant's rights in his mark and the issue of the Respondent's alleged bad faith. The Response contains assertions going to both of those issues, as well as assertions going to the closely-related issue of the Respondent's alleged legitimate interest or fair use of the domain name. In this Administrative Panel's view, there is sufficient information in these documents to ensure that the Panel's decision on these issues (and the other relevant issues) is not based "solely on the unilateral statements and arguments of the Respondent".

6. In short, there is nothing exceptional about the facts in dispute between the parties, the disputed application of the principles of the Uniform Policy to those facts, or the form and substance of the Complaint and the Response filed by the parties, which warrants complicating the resolution of this dispute by requesting supplementary submissions from either or both of the parties. Accordingly, this Administrative Panel refuses the Complainant's request to be allowed to submit a Reply.

### **2<sup>nd</sup> Interim Order**

7. This Administrative Panel orders that the Complainant's request to be allowed to submit a Reply is denied.

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Andrew F. Christie  
Sole Panelist

Dated: July 20, 2000

